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April 15, 1999

**BY HAND DELIVERY**

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**RECEIVED**  
**APR 15 1999**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: Notice of Ex Parte Communication Regarding Interconnection  
and Resale Obligations Pertaining to Commercial Mobile  
Radio Services, CC Docket No. 94-54**

Dear Ms. Salas:

Yesterday, on behalf of the Telecommunications Resellers Association ("TRA"), the undersigned of Hogan and Hartson L.L.P. and David Gusky, Executive Vice President, TRA, met with Tom Sugrue, Chief, Wireless Telecommunications Bureau, and John Cimko and Nancy Boocker, of the Wireless Telecommunications Bureau Policy Division, regarding the referenced proceeding.

In the meeting, TRA discussed its position regarding the importance of unrestricted wireless resale to a competitive wireless and full service market. TRA also discussed the importance of Commission enforcement of the current resale obligation and the need to eliminate any sunset of the resale requirement. TRA also discussed its opposition to proposals to eliminate the resale requirement on a market-by-market basis.

The attached handouts were distributed and discussed at the meeting. TRA also discussed the points made in the November 13, 1998, letter to Chairman William Kennard from David Gusky of TRA filed in the referenced docket.

TRA also distributed and discussed the reply comments of the Personal Communications Industry Association (PCIA) in WT Docket No. 98-205, et al., filed Feb. 10, 1999, which we have previously filed for inclusion in the record of the referenced proceeding (CC Docket No. 94-54). In its reply comments, PCIA opposed the lifting of the

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commercial mobile radio services spectrum cap. PCIA cited data showing that the PCS share of the wireless market is still relatively low. This data shows that the FCC's decision to sunset the wireless resale requirement, which was based on predictions of the effect of the introduction of PCS on the competitiveness of the wireless market, was not well-founded. I have hereby submitted two copies of this notice for each of the referenced proceedings to the Secretary, as required by the Commission's rules. Please return a date-stamped copy of the enclosed (copy provided).

Please contact the undersigned if you have any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Linda L. Oliver".

Linda L. Oliver  
Counsel for Telecommunications  
Resellers Association

Enclosure

cc: Tom Sugrue  
John Cimko  
Nancy Boocker

**Telecommunications Resellers Association**  
**Summary of Position on Wireless Resale Reconsideration Issues**

**Wireless Resale Sunset**

- The wireless resale sunset is based on faulty predictions about behavior of CMRS providers and should be eliminated.
- Before allowing a sunset to take place, the Commission must re-examine the wireless market.
- The Commission should protect resellers' customers from losing service when the resale rule sunsets.

**Barriers to Resale**

- Commission policy forbids indirect as well as direct restrictions on resale.
- The Commission should clarify that a refusal to offer a resale agreement constitutes a restriction on resale.
- The Commission should clarify that refusal to provide resellers with electronic billing tapes constitutes a restriction on resale.

**Enforcement of the Resale Requirement**

- The existing pattern of noncompliance with the resale requirement warrants vigorous FCC enforcement.
- The Commission should declare that rocket docket procedures will apply to complaints from wireless resellers.

**Resale of Wireless/CPE Bundles**

- Resale of bundled offerings of wireless service and equipment must remain unrestricted.
  - Wireless service is effectively discounted through below-cost pricing of equipment sold in packages.
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# **Key Points to Address in Reconsideration Order on Wireless Resale**

**CC Docket No. 94-54**

**Telecommunications Resellers Association**

**April 1999**

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## ACCESS TO COMPUTERIZED BILLING INFORMATION

Failure to provide reseller customers computerized (electronic) billing information constitutes an indirect restriction on resale, if the carrier has the capability to provide such information.

Denial of access to computerized billing information also is unreasonably discriminatory if that information is provided in a computerized or electronic format to any of the carrier's end user customers. 1/

The provision of computerized (electronic) billing information by a carrier to a reseller is a critical component of a resale business.

- Access to computerized billing information permits a reseller to utilize its own computer capabilities to cost-effectively produce individual bills for its thousands of retail subscribers.
- If a carrier provides only "paper" bills for a reseller's use of the carrier's airtime, the reseller would be forced to *manually* enter into its billing system the airtime usage of each of its customers in order to produce subscriber-specific invoices. This process simply is not realistic in terms of cost, efficiency, likelihood of error, and time.

As a practical matter, faced with the prospect of using only carrier-provided paper bills, a reseller could not, as a practical matter, resell the services of that particular carrier.

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1/ Resellers would compensate carriers for any costs associated with producing the electronic billing information.

## USE OF THE ROCKET DOCKET FOR WIRELESS RESALE COMPLAINTS

The FCC's accelerated docket ("rocket docket") procedures are well-suited to resolving complaints that a carrier is denying service to a requesting wireless reseller customer. <sup>2/</sup>

Wireless resale complaints generally would satisfy the Commission's criteria for rocket docket consideration:

- Involvement of FCC staff is likely to produce resolution of the dispute.
- Expedited resolution of the dispute would advance competition in the wireless market.
- The issues presented would be suited for decision under the constraints imposed by accelerated docket procedures.
- Complaints would not be likely to raise threshold questions leading to a motion to dismiss.
- If a wireless reseller seeks accelerated docket treatment, it is not likely that a disparity in resources will harm its ability to prosecute its complaint. <sup>3/</sup>

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<sup>2/</sup> Implementation of the Telecommunications Act of 1996 Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers, CC Docket No. 96-238, Second Report & Order, FCC 98-154, rel. July 14, 1998 ("Accelerated Docket Order"). Nothing in the Commission's accelerated docket procedures would preclude use of those procedures to resolve complaints against wireless common carriers.

<sup>3/</sup> Accelerated Docket Order at ¶¶ 16-22. Of course, some complaints filed by wireless resellers might not have all the characteristics necessary for accelerated docket treatment. But the widespread refusal of many PCS and SMRS carriers to permit resale should mean that a number of wireless resale complaints would satisfy these criteria, and that use of rocket docket procedures would lead to quick resolution of those complaints.

TRA's member surveys show that many (if not most) PCS and SMRS carriers still refuse to permit unrestricted wireless resale. 4/

The availability of rocket docket procedures would be an effective and resource-limited means to produce industry compliance with the wireless resale rule.

The Commission's use of rocket docket procedures has been effective in obtaining industry-wide compliance with FCC rules.

For example, the FCC relied on the availability of rocket docket procedures to help ensure that incumbent local exchange carriers would continue to fulfill their interconnection agreement obligations during the pendency of the FCC's Supreme Court remand proceeding on network elements. 5/

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4/ See Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services, WT Docket No. 98-100 et al., FCC 98-134, released July 2, 1998, at ¶ 38 and n.114 ("[T]he record contains significant evidence suggesting that despite the current resale rule, abuses in the form of refusals to offer services for resale still exist," citing, inter alia, TRA's July 1997 Survey). See also February 10, 1998, Letter from Ernest B. Kelly, III, President, TRA, to Chairman William E. Kennard, FCC, attaching 1997 TRA Year End Survey of Wireless Resellers.

5/ See "Common Carrier Bureau Establishes Rapid Response System to Minimize Disputes Arising From Supreme Court's *Iowa Utilities Board* Order, Public Notice, DA 99-532, rel. March 17, 1999.